As regards the first point, it is clear that the order with which this Court is concerned is the order of the Court of Appeal and it is immaterial to consider whether or not the order for sale made by Cussen J. was or was not a final order. The order of the Court of Appeal in directing that certain issues be tried, and that the Originating Summons should be reheard, was in effect an order for a retrial. It is certainly arguable that if the Privy Council set aside the order of the Court of Appeal and restored the order of Cussen J. the rights of the parties, so far as concerns the order for sale, would be finally determined, but, if on the other hand the Privy Council upheld the order of the Court of Appeal, the issues would have to be tried and other proceedings taken before a final adjudication between the parties were arrived at. An order for a retrial has always been treated as an interlocutory order, and I feel no doubt that an order which does not finally adjudicate the points in dispute unless the result of the re-hearing is in favour of the chargee, is an interlocutory order (see *Issacs & Sons v. Salbstein*, 1916, 2 K. B. page 147).

The only question that remains therefore is whether the Court ought to exercise its discretion in granting leave to appeal under Rule 2(b). The position is that if all the issues directed by the Court of Appeal are tried and decided in favour of Murugappa, he will have satisfied all claims against him by the payment into Court of $5,500, and no order for sale should be directed. If on the other hand the order for sale is made and the issues are tried afterwards under section 154 of the Land Code and decided in his favour, he will have suffered hardship by the sale of his interest in the land, such sale being subsequently proved to have been unnecessary. On the other hand even if all the issues are decided in favour of the chargee, his only complaint will be that the realisation of his security has been postponed. As it appears from the record that he obtained an order for sale as long ago as 1932, and failed to proceed with such sale, and as in the meantime he is secured by the charge in respect of principal and interest, his position is not very materially affected by the delay necessitated by the trial of the issues directed. I cannot see that any point of great general or public importance is involved, such as would justify the Court in facilitating the pursuit by the chargee of a course which may well involve Murugappa in great and irremediable loss.

In my opinion, therefore, the application should be refused with costs.

Application refused.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

December 12, 1938.

PUBLIC PROSECUTOR v. NAHAT SINGH.

(NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 27 of 1938)

Penal Code, S.304A—causing death by a rash act —plea of guilty—Magistrate's duty to record evidence.

The Respondent was charged with an offence under Section 304A of the Penal Code. At first he claimed trial and the hearing was adjourned. At the adjourned hearing he retracted his previous plea and pleaded guilty whereupon he was convicted and sentenced to a fine of $100/- or in default to 3 months' rigorous imprisonment. The Public Prosecutor appealed on the ground of inadequacy of sentence. The Respondent did not appeal. The trial Magistrate recorded no evidence but made a short note of the proceedings at the trial.

Held, that it is of the utmost importance that a Magistrate should take proper notes of evidence in a criminal case where the accused pleads guilty.

In this case the Appellate Judge decided to record evidence himself and on the evidence before him he considered that the sentence of the learned Magistrate was totally inadequate. The sentence was altered to one of 12 months' rigorous imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Draper, Deputy Public Prosecutor, for Public Prosecutor (appellant).

Respondent in person.

Cur. Adv. Vult.

Raja Musa, Ag. J.—In this case the Respondent was charged with an offence under section 304A of the Penal Code. The Respondent at first claimed to be tried and the hearing was adjourned. At the adjourned hearing he retracted his previous plea and pleaded guilty upon which he was convicted and sentenced to a fine of $100/- or, in default, 3 months' rigorous imprisonment.

The Public Prosecutor thereupon appealed on the ground of inadequacy of sentence. The Respondent on the other hand never appealed.

The learned Magistrate recorded no evidence whatsoever. His only note on the case reads as follows:—

> "To-day accused pleads guilty on both charges. Understands the nature and consequences of his plea. States lorry skidded—Court accepts plea. Prosecuting Officer states scene at 23 mile Bahau—Tampin Road—No wheel-marks on road—lorry entered grass verge, got on to road again and ran into a bank on its right side 140 feet away where it fell. The deceased was a passenger in front seat; whole radiator smashed.

Mr. Butt states steering efficient and that probably Dunlop tanks in the lorry rolled about and not firmly rested caused lorry out of control. Fined $100/- or 3 months R.I. on the 1st charge. Cautioned and discharged on the 2nd charge. Licence to be endorsed."

Time and again pronouncements have been made by Judges of the Supreme Court as to importance and necessity of taking proper notes in a criminal case where the accused pleads guilty. I can only repeat such a pronouncement. Such a necessity is all the more obvious in a case of a serious nature such as this.

In this case I decided to record evidence myself and from such evidence it was clear to me that this was a case of gross negligence which resulted in the death of a harmless human being who was a passenger in the Respondent's lorry at the time of the accident and who was crushed to death when the lorry finally crashed into a bank after careering off the road surface into a side drain.

In such circumstances I considered that the sentence of the learned Magistrate was totally inadequate and I altered such sentence to one of 12 months' Rigorous Imprisonment.

Sentence enhanced.

[REVISIONAL CIVIL JURISDICTION]

TERREL, Ag. C.J.

November 3, 1938.

JOSEPH v. SAYAMPANATHAN (m.w.).

(SELANGOR CIVIL SUIT No. 806 of 1938)

SAYAMPANATHAN (m.w.) v. JOSEPH.

(SELANGOR CIVIL SUIT No. 936 of 1938)

Civil Procedure Code, Ss. 232, 573—Claims involving taking of accounts to what extent cognizable by Magistrates' Courts.

Two counter suits filed between the same parties involved the taking of accounts as between principal and agent. On a reference to the Judge for decision on the question whether such suits must necessarily be brought to the Supreme Court.

Held, that the Magistrate had jurisdiction under Section 232 of the Civil Procedure Code to hear and decide the suits, his jurisdiction not being affected by the fact that when accounts are taken in the Supreme Court a special procedure is laid down.

Held, further, that on such reference the parties are entitled to be heard if they so desire.

Reference to the Judge under Section 573 of the Civil Procedure Code.

Benjamin for Joseph.

Tenku Ismail for Sayampanathan.

Terrell, Ag. C. J.—The learned Magistrate has referred to the Supreme Court the question whether suits involving the taking of accounts must necessarily be brought to the Supreme Court.

Under section 573 of the Civil Procedure Code, parties are entitled to be heard if they so desire; but I understand from the note made by the learned Magistrate, that it was agreed that *counsel should submit their arguments in writing (which has been done)* and they do not desire to present further arguments orally.

There is no doubt that section 232 of the Civil Procedure Code applies to the Magistrate's Courts (see Schedule 4). The fact that when accounts are taken in the Supreme Court, a special procedure is laid down, does not affect the question of jurisdiction. It merely results in this, that if accounts have to be taken in a Magistrate's Court, such accounts have to be taken in a summary manner by the Magistrate himself.

Most money claims, cognizable by the Magistrate's Courts, involve the calculation of interest, or the allowance of sums paid to account. To this extent such claims involve the taking of an account, and it has never been suggested that such claims are not cognizable by the Magistrate's Court.

I rule, therefore, that the Magistrate has jurisdiction to hear and decide both the above suits.

Reference Answered.

[ORIGINAL CIVIL JURISDICTION]

RAJA MUSA, Ag. J.

June 10, 1939.

CHU CHIK SANG

v.

CHHI TIAM AND 30 OTHERS

(SELANGOR MAGISTRATE'S CIVIL APPEAL No. 4 of 1938)

Labour Code (Cap. 154) S. 152—Usage in mines.

There is a general usage in the tin mining industry among Chinese that daily paid coolies in a tin mine may leave, or be dismissed from, their employment without notice.

A. J. Bostock-Hill for Appellant.

Respondents in person.

Raja Musa, Ag. J.—In this case the Protector of Chinese, Selangor, as Deputy Controller of Labour